

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2000-890

November 1, 2000

MAINE PUBLIC UTILITIES COMMISSION
Rulemaking Amendment to Chapter 301,
62(C)(2) (Termination of Service by Medium
and Large Non-Residential Customers and
Aggregators; Applicability of Opt-Out Fee)

NOTICE OF PROPOSED
ORDER ADOPTING
EMERGENCY RULE

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

Through this Order, we propose to amend the opt-out fee provision of our standard offer rule (Chapter 301) pursuant to emergency rulemaking procedures. Specifically, we propose to reinstate the previously existing opt-out fee provision on a temporary basis pending a full consideration of the most appropriate means to deter the “gaming” of the standard offer.

II. BACKGROUND AND DISCUSSION

On August 16, 2000, the Commission adopted several amendments to the standard offer rule (Chapter 301). The amendments were based on our experience in implementing the rule and conducting last year’s standard offer bid process, and the comments of participants in the New England power market. These amendments included a change to the opt-out fee provision of the rule (section 2(C)(2)(c)), the purpose of which is to deter the strategic movement of customers between standard offer service and the competitive market. Such activity is often referred to as “gaming” the standard offer.

The original opt-out fee provision of Chapter 301 required that a customer who entered the standard offer service after taking service from a competitive provider must either continue to take standard offer service for 12 months or pay an opt-out fee equal to one-month’s generation bill to the standard offer supplier. In the amended rule, the opt-out provision applies only if a customer has taken standard offer service during the summer months; if so, the customer must remain on standard offer service through the following February or pay an opt-out fee equal to the sum of its two highest standard offer bills. We amended the provision to target summer service because it was in these months that there appeared to be the most potential for strategic entry to standard offer service. Electric power prices in the New England market are typically at their highest during these months. Because standard offer prices are averaged, they are likely to be lower than summer market prices, thereby creating an incentive to take standard offer service during the summer and then return to the competitive market, thus creating a large financial risk for the standard offer supplier.

It appears, however, that by limiting the applicability of the opt-out fee to summer months, we inadvertently created an opportunity for action that might be considered gaming the standard offer by entering the service during non-summer months. Under conditions where market prices become higher than the standard offer rate, as is currently the case, suppliers, or customers who have purchased electricity from competitive providers, will have the economic incentive to extract savings that can be achieved by customers' returning to standard offer service now priced below market. Having returned to standard offer in the post-summer period, customers may return to the competitive market at the beginning of the new standard offer period starting March 1, 2001, without incurring an opt-out fee. Before our rule change this summer, a customer returning to the standard offer would have to wait 12 months before returning to the competitive market without an opt-out fee. It is our understanding that a significant number of customers of competitive providers are seriously considering a return to the standard offer in the near future in order to extract the below-market savings, and that these customers would not engage in this gaming opportunity if they could not return to the market for the new standard offer period on March 1, 2001 without the opt-out fee.

We are concerned because the current suppliers of standard offer service were chosen early in the year to provide service for a 12-month period beginning March 1, 2000. At the time the suppliers were chosen, the original opt-out fee was in effect. The opt-out fee provision in the current rule, as amended in August, 2000, would allow a significant amount of load to enter the standard offer at below current market prices and may create substantial financial harm to the suppliers. Any harm would be a direct result of our change of the rule in the middle of the current standard offer period. Creating the potential for such harm was inadvertent, and allowing it to occur would seem to be fundamentally unfair to the current standard offer suppliers. Additionally, it may signal to suppliers generally in the market that the Maine Commission may change rules in the middle of the game to their substantial detriment. This could cause some suppliers to decide not do business in Maine at all and others to add significant premiums to their Maine prices. The end result would be higher rates for Maine consumers.

Thus, we are considering a proposed emergency rule amendment to correct the situation by reinstating the original opt-out provision on a temporary basis so that current suppliers will not be harmed by the rule change. This will also allow for time to consider a permanent solution to the "gaming" problem.

We are in the midst of a standard offer year that began on March 1, 2000 and a standard offer auction process for service beginning March 1, 2001. We find that the opt-out fee amendment adopted last August has inadvertently created a potential to cause financial harm to current standard offer suppliers, and thereby increase the risk that standard offer prices for Maine's consumers in the future will be higher. This has created an immediate threat to the general welfare that allows us to proceed pursuant to the emergency rulemaking provision of the Administrative Procedures Act, 5 M.R.S.A.

§ 8054. Under that provision, we may modify the rulemaking procedures to the minimum extent necessary to meet the threat caused by the emergency situation. Customers of competitive providers have not yet returned to the standard offer as of yesterday and at our deliberative session on this proposed emergency rulemaking, representatives of two competitive providers agreed that they would forego switching or attempting to switch any of their customers to standard offer before Friday, in order to encourage us to hold a hearing on Thursday. Consequently, we believe that we can allow for an expedited comment period and rulemaking hearing on Thursday, November 2, 2000, and still address the substantial harm from the situation described above. Other requirements for rulemaking processes must yield for us to address the immediate threat to the general welfare.

Accordingly, an emergency rulemaking hearing will be held on Thursday, November 2, 2000 at 1:30 p.m. Written comments will be accepted at the Commission until noon on Thursday. Commenters and persons speaking at the hearing are encouraged to review the audio recording of the Commission's preliminary discussion of this matter during the October 31 deliberative session. The audio recording is available at <http://janus.state.me.us/mpuc/audio.htm>, go to Archived events, click on 10/31/00

Accordingly, we

O R D E R

1. That the attached Chapter 301, Standard Offer Service, is hereby proposed;
2. That the proposed rulemaking procedure described above is adopted;
3. The Administrative Director shall send copies of this Notice and the attached proposed rule by e-mail or fax where possible, to :
 - a. All persons who have filed with the Commission within the past year a written request for notice of rulemakings;
 - b. All persons on the service list in the rulemaking, Public Utilities Commission, Bidding Processes and Terms and Conditions for Standard Offer Service (Chapter 301), Docket No. 97-739;
 - c. All persons who filed comments in Docket No. 2000-489;
 - d. All licensed competitive electricity providers in the State;

Dated at Augusta, Maine, this 1st day of November, 2000.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.